



**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/172,853	10/15/98	DUPUIS	C 5725.0134-01

FINNEGAN HENDERSON FARABOW  
GARRETT & DUNNER  
1300 I STREET NW  
WASHINGTON DC 20005-3315

HM22/0108

EXAMINER

WEBMAN, E

ART UNIT	PAPER NUMBER
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1617

DATE MAILED:

01/08/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/172853

Applicant(s)

Dupuis

Examiner

WEBMAN

Group Art Unit

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 9/28/00
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☐ Claim(s) 25-67 is/are pending in the application.
- ☐ Of the above claim(s) 25-42, 63 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 43-62, 64-67 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3/21/01  
Claims 43-62, 64-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over EPA 590604 in view of Sramek and <sup>C.A.M.</sup>~~Cohen~~, Abstract 117946 ('546).

Applicants stipulate that "604 teaches the claimed "acrylates" copolymer (page 7 first two paragraphs), '604 teaches freeze-thaw stability in hair sprays (abstract).

Sramek teaches an aerosol composition containing hair setting resins (abstract). Hair setting resins which are acrylic polymers containing such monomers as methacrylic acid, hydroxymonoesters of methacrylic acid with C2 glycol, methyl methacrylate, and butyl acrylate. *Sramek also teaches alcohol and water (col. 5 lines 59-65).* are specified (column 5 lines 59-65). Water soluble cosmetically acceptable basic compounds, including AMP (column 9 lines 22-34), perfumers, protein hydrolysates, preservatives, and silicones (column 9, lines 47-56), the last disclosed by applicant as a conditioning agent on page 30 second paragraph.

'546 teaches a hair setting polymer comprising C2-8 alkyl acrylates, methymethacrylate, hydroxyethyl-methacrylate and methacrylic acid. High effectiveness and water resistance are disclosed.

6/21/01  
It would have been obvious to one of ordinary skill to add the polymer of '604 to the composition of Sramek to impart freeze-thaw<sup>w</sup> resistance and to use the polymer of '546 as a hair

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setting polymer in view of its high effectness and water resistance. As to the claimed 41% aqueous dispersion of the hydroxyacrylate, applicants disclose such is an item of commerce (example 6, page 39).

Applicants appear to be arguing combination by <sup>hindsight:</sup> ~~the prior art~~

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

As to applicants' argument of <sup>u</sup> ~~unexpected~~ <sup>ed</sup> results, none of the examples cited includes the claimed "acrylates/hydroxyesters acrylates" polymer. The superior results cited in "Avon Techniques"

Is irrelevant <sup>va</sup> because the reference does not disclose an ethyl acrylate. If it did, ~~a polymer~~ ~~with~~ The examiner notes that the 1997 Avon document would suggest <sup>†</sup> That the elected

invention is not novel because applicants' first claim the hydroxyester polymer in their <sup>supplemental amendment</sup> ~~pre~~ amendment, filed 8/4/99.

Further, because applicants only disclosure of this polymer is in their <sup>issue</sup> ~~pre~~ amendment, there appears to be an of new matter. Lastly, the only description of such a polymer is suggested by the

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<sup>supplemental amendment</sup>

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phrase on page 9 lines 5-6, "sodium salts of polyhydroxyacids", raising the issue of the adequacy of ~~of~~ the written description. The examiner also notes that there is an issue of vagueness in the polymer name because there is no description of what the term "acrylates/hydroxyesters acrylates" encompasses.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is (703) -308-4432. The examiner can normally be reached on Monday through Friday from 9 A.M. to 5 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, M. Moezie, can be reached on (703) -308-0570. The fax phone number for the organization where this application or proceeding is assigned is (703) -305-3592.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) -308-1235.

Webman/LR

December 18, 2000

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LEONARD J. WEBMAN  
PRIMARY EXAMINER  
GROUP 1500